181 (2)

No. 10-847

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM THADDEUS TURNER, *Petitioner*,
v.
STATE OF FLORIDA, *Respondent*.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

PAMELA JO BONDI
ATTORNEY GENERAL OF FLORIDA

CAROLYN M. SNURKOWSKI*
ASSOCIATE DEPUTY ATTORNEY GENERAL
FLORIDA BAR NO. 158541

CHARMAINE M. MILLSAPS
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0989134
PL-01, THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300 /// FAX (850) 487-0997
charmaine.millsaps@myfloridalegal.com
*Counsel of Record
COUNSEL FOR RESPONDENT

CAPITAL CASE

QUESTION PRESENTED

Whether this Court should grant review of a claim that the Eighth Amendment mandates a particular definition of mental retardation in a case where the capital defendant's IQ is normal?

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IN THE
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WILLIAM THADDEUS TURNER, *Petitioner*,

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RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

OPINION BELOW

The Florida Supreme Court's opinion denying Turner's claim is an unpublished order available at *Turner v. State*, 2010 WL 3802538 (Fla. September 28, 2010).

JURISDICTION

The Florida Supreme Court's order denying the claim was issued on September 28, 2010. No motion for rehearing was filed. The petition for writ of certiorari was filed on December 27, 2010. The

petition was timely. *See* Sup. Ct. R. 13.1 (. . . a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals (including the United States Court of Appeals for the Armed Forces) is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment.); 28 U.S.C. § 2101(c). Jurisdiction exists pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth Amendment of the United States Constitution which provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment of the United States Constitution, section 1, which provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law;

> nor deny to any person within its jurisdiction the equal protection of the laws.

Florida's imposition of the death sentence upon a defendant with mental retardation prohibited statute, § 921.137(1), Florida Statutes (2010), which provides in part:

> (1) As used in this section, the term "mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term "significantly subaverage general intellectual functioning," for the purpose of this section, means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Agency for Persons with Disabilities. The term "adaptive behavior," for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community. The Agency for Persons with Disabilities shall adopt

> rules to specify the standardized intelligence tests as provided in this subsection.
>
> (2) A sentence of death may not be imposed upon a defendant convicted of a capital felony if it is determined in accordance with this section that the defendant has mental retardation.

STATEMENT OF THE CASE AND FACTS

The facts of this case, as recited by the Eleventh Circuit in its affirmance of the district court's denial of the petition for writ of habeas corpus, are:

> In 1969, Turner married Shirley Hart, a victim in this case, and for more than ten years, they had a loving, harmonious marriage. By 1983, however, their marriage had deteriorated. In February 1984, Shirley decided to leave Turner and take their two young daughters, seven-year old Anetra and five-year old Anita, with her. Shirley and the daughters moved in with Joyce Brown, the other victim in this case, and Joyce's fifteen-year old daughter, Irene Hall.
>
> Turner responded to the separation by spying on Shirley with

binoculars, watching Joyce's house, and peeping into the windows of Joyce's apartment. Turner repeatedly arrived at Joyce's apartment asking to speak to his estranged wife, but Shirley refused to see or talk to him. Joyce informed Turner on several occasions that Shirley did not want to talk to him.

During visits to Joyce's house, Turner threatened to kill both Shirley and Joyce and blamed Joyce for the disintegration of his family. Turner believed that his wife and Joyce were lesbians and prostitutes, who sold drugs and participated in illicit behavior in the presence of his daughters, especially seven-year old Anetra.

At approximately 6:30 a.m. on July 3, 1984, Turner walked to Joyce's apartment. Turner was armed with a large knife and his father's single-shot shotgun, which he obtained without his father's permission. While kneeling on the sidewalk in front of the apartment building, Turner fired the shotgun two or three times into the building, shooting directly into the front door and windows and reloading after each shot.

At trial, Irene testified that she heard the shots and that Shirley ran into Irene's bedroom and "ask[ed] her how to lock the door." Anetra also was

present in Irene's bedroom. Shirley was unable to lock the door, and Turner entered the bedroom carrying the shotgun and the knife. While Irene hid under the bed, Turner pushed Shirley onto the floor, where he stabbed her approximately twenty-two times in the presence of fifteen-year old Irene and seven-year old Anetra. According to the two girls, Turner repeatedly cursed at Shirley as he continually stabbed her, saying: "bitch, I hate you;" "I'm sick and tired of you;" "you won't let me see my kids;" and "[y]ou're the bitch I want."

Anetra attempted to save her mother by beating on her father's back and telling him to stop. Anetra ran out of the room when she heard Joyce call for her. Turner did not say anything to Anetra or Irene and did not react to anything the children said or did. Irene remained under the bed while Turner continued to stab Shirley to death.

After stabbing Shirley, Turner left the apartment building and went to the telephone booth where Joyce was on the phone with the police. As approximately forty people watched, Turner stabbed Joyce repeatedly. Turner pulled Joyce out of the telephone booth by her hair and continued to stab her as she lay on the

ground. Joyce's daughter, Irene, approached a neighbor, handed him a shotgun, and begged the neighbor to shoot Turner. The shotgun, however, was empty; so the neighbor threw rocks at Turner in an attempt to stop the stabbing. Joyce begged Turner not to kill her, but Turner replied, "no, you're the one who kept my family away from me."

The record is in dispute regarding whether Turner ceased stabbing Joyce when a police car passed by the telephone booth. Two witnesses testified that Turner continuously stabbed Joyce despite the fact that a police officer drove by and failed to stop to assist. In contrast, another witness testified that Turner stabbed Joyce a number of times until a police car drove by, and Turner "stood up in a correct position and pretended that there wasn't anything going on." According to this witness, after the police car drove by, Turner started to stab Joyce again. In addition, daughter Irene testified that Turner stabbed her mother, retreated behind a house until the police car passed by the scene, and then returned to the telephone booth to continue the stabbing.

Officers John Venosh, Carlton

> Aikens, and E.L. MacDonald of the Jacksonville Sheriff's Office arrived at the scene shortly after the murders. Turner fled down an alley, and the police officers chased him. According to Officer Venosh, Turner stopped, raised his hands while keeping a knife in his right hand, and then took a step toward the officer. After a momentary standoff, Turner dropped the knife and surrendered to the officers. Officer Venosh testified that Turner immediately stated, "please don't kill me, please don't kill me." As Turner and the officers walked to the patrol car, Turner remarked, "She was f-king up my family, she was f-king up my life." Officer MacDonald described Turner as quiet and not hysterical, noting that Turner "appeared to be in control of himself."
>
> Turner was charged with two counts of first-degree murder for the deaths of Shirley Turner and Joyce Brown.

Turner v. Crosby, 339 F.3d 1247, 1249-1250 (11th Cir. 2003)(footnotes omitted).

On November 29, 2004, Turner filed a motion in state court asserting that he was mentally retarded and therefore, the Eighth Amendment

prohibited his execution. The state trial court appointed two mental retardation experts as required by Florida's rule of criminal procedure, rule 3.203. The trial court appointed Dr. Gregory A. Prichard at the recommendation of the State and Dr. Daniel Grant at the recommendation of the defense.

Dr. Prichard examined Turner on July 24, 2008, with defense counsel, Mr. Lohman, present. (PC Vol. II 202). Dr. Prichard administered a WAIS III test and determined Turner's full scale I.Q. is 98. (PC Vol. II 202, 206-207). Dr. Prichard's written report concluded that Turner was "a man with average intellectual capacities" and did "not meet any of the three criteria for mental retardation." (PC Vol. II 206-207).

Dr. Grant examined Turner on July 17 and 18, 2008, with Mr. Lohman present. (PC Vol. V 871, 875). Dr. Grant administered a Stanford Binet Intelligence Scale - 5th edition test and determined Turner's full scale I.Q. is 108. (PC Vol. V 876, 877). Dr. Grant noted that there were no significant differences between Turner's verbal score of 109 and Turner's nonverbal score of 107. (PC Vol. V 876). Dr. Grant concluded that Turner's performance on the test "places his current intellectual/mental functioning above the level defined as mentally retarded by Florida Rule of Criminal Procedure 3.203(b)." (PC Vol. V 877). Dr. Grant's written report concluded that Turner's "current level of intellectual abilities" were "well within the average range of intelligence."

(PC Vol. V 877).

The State filed a motion for summary judgment, based on the experts' written reports, noting that both experts agreed that Turner was not mentally retarded. On July 22, 2009, the trial court held a hearing on the State's motion.

On September 14, 2009, the trial court summarily denied the motion based on the two experts' written reports. The trial court, in its written order, noted that one expert concluded that Turner's current I.Q. was 98 and the other expert concluded Turner's current I.Q. was 108. The trial court found Turner's intellectual functioning was normal. The trial court noted that under Florida law, a defendant must show he has an IQ of 70 or below. The trial court denied the request for an evidentiary hearing explaining that there was no need to address the other two prongs when the critical, threshold first prong had not been established. The trial court noted that there was "no factual dispute on the critical threshold first prong" and therefore, there was simply "no dispute that is of any legal consequence for this Court to resolve." The trial court concluded that the record, containing the two experts' reports, conclusively rebutted the claim of mental retardation.

On appeal, the Florida Supreme Court affirmed the trial court's summary denial. In an unpublished order, the Florida Supreme Court noted that the trial court had appointed two mental health

experts to examine Turner as required by Florida Rule of Criminal Procedure 3.203. The Florida Supreme Court observed that "[o]ne mental health expert determined that Turner's full-scale IQ was 98, and the other expert determined that Turner's full-scale IQ was 108." *Turner v. State*, 2010 WL 3802538 (Fla. September 28, 2010). The Florida Supreme Court noted that "[b]oth of these scores fell within the average intelligence range." The Florida Supreme Court concluded that "the expert reports conclusively rebutted the first-prong of Turner's *Atkins* claim." *Turner v. State*, 2010 WL 3802538 (Fla. September 28, 2010).

REASONS FOR DENYING THE WRIT

ISSUE

WHETHER THIS COURT SHOULD GRANT REVIEW OF A CLAIM THAT THE EIGHTH AMENDMENT MANDATES A PARTICULAR DEFINITION OF MENTAL RETARDATION IN A CASE WHERE THE CAPITAL DEFENDANT'S IQ IS NORMAL?

Petitioner Turner asserts that this Court should grant review of this case to determine whether the Eighth Amendment mandates a particular definition of mental retardation and when that determination should be made. The petition for writ of certiorari should not be granted. There is no conflict among courts of last resort on the actual

issue in this case which is whether this Court's decision in *Atkins v. Virginia*, 536 U.S. 304 (2002) applies to a capital defendant with an IQ of 108. According to his own expert, Turner's IQ is 108. The expert recommended by Turner administered the Stanford Binet Intelligence Scale - 5th edition and determined that Turner's full-scale IQ was 108. Using the Stanford-Binet scale, two standard deviations below the mean results in an IQ score of 68. Turner's IQ on the Stanford-Binet scale, however, was 108. Turner's IQ is 40 points above the score for mental retardation. Turner's IQ is normal. No court has found the Eighth Amendment prohibits the execution of a capital defendant with a normal IQ. Moreover, while different states define mental retardation using different definitions, no court has held that a particular definition of mental retardation is constitutionally mandated. This Court in *Atkins* held that no particular definition of mental retardation was constitutionally mandated. Rather, this Court in *Atkins* left the definition of mental retardation to the states. The petition should be denied.

Florida law

In 2001, prior to this Court's decision in *Atkins*, the Florida Legislature enacted a statute prohibiting the imposition of a death sentence on a mentally retarded capital defendant. § 921.137, Fla. Stat. (2010); *see also Nixon v. State*, 2 So.3d 137, 141 (Fla. 2009)(summarizing the history of the applicable

statute and rule). That statute defined "mental retardation" as "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18." § 921.137(1), Fla. Stat. (2010). The statute, in turn, defined the term "significantly subaverage general intellectual functioning," as "performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Agency for Persons with Disabilities." § 921.137(1), Fla. Stat. (2010). After this Court's decision in *Atkins*, the Florida Supreme Court adopted a rule of criminal procedure, rule 3.203, governing capital defendants who are mentally retarded. *Hodges v. State*, - So.3d -, -, 2010 WL 4878858, 9 (Fla. December 2, 2010)(citing *Phillips v. State*, 984 So.2d 503, 509 (Fla. 2008). The rule also contained a definition of mental retardation. Fla.R.Crim.Pro. rule 3.203(b)(defining "significantly subaverage general intellectual functioning," as "performance that is two or more standard deviations from the mean score on a standardized intelligence test authorized by the Department of Children and Family Services in rule 65G-4.011 of the Florida Administrative Code."). The definition of mental retardation in the statute and the rule are "substantially similar." *Hodges*, - So.3d at -.

In Florida, a capital defendant must prove mental retardation by demonstrating: (1) significantly subaverage general intellectual

functioning; (2) concurrent deficits in adaptive behavior; and (3) manifestation of the condition before age eighteen. *Hodges*, - So.3d at - (citing *Nixon*, 2 So.3d at 141). As the Florida Supreme Court has noted, "Florida's definition of mental retardation is consistent with the APA's diagnostic criteria for mental retardation." *Franqui v. State*, - So.3d -, -, 2011 WL 31379, 7 (Fla. January 6, 2011).[1]

The Florida Supreme Court requires capital defendants to have an IQ below 71 to meet the first prong of Florida's test for mental retardation. *Nixon*

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[1] The American Psychiatric Association's standard reference text, the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition Text Revision (2000) ("DSM-IV-TR"), provides the following clinical definition of mental retardation requires:

> A. Significantly subaverage intellectual functioning: an IQ of approximately 70 or below on an individually administered IQ test (for infants, a clinical judgment of significantly subaverage intellectual functioning).
> B. Concurrent deficits or impairments in present adaptive functioning (i.e., the person's effectiveness in meeting the standards expected for his or her age by his or her cultural group) in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health and safety.
> C. The onset is before age 18 years of age.

DSM-IV-TR at 49.

v. State, 2 So.3d 137, 142 (Fla. 2009)(rejecting a claim that having a cutoff of below 71 is unconstitutional and reaffirming their prior decision in *Cherry v. State*, 959 So.2d 702 (Fla. 2007)). Under the terms of the statute, the "defendant has the burden to prove that he is mentally retarded by clear and convincing evidence." *Hodges*, - So.3d at - (citing § 921.137(4), Fla. Stat. (2005)). If a defendant fails to prove any of the three components, he or she will not be found to be mentally retarded. *Hodges*, - So.3d at - (citing *Nixon*, 2 So.3d at 142).

Turner's case

Turner has no standing to litigate the nuances of the definition of mental retardation because Turner is not retarded under any possible definition of mental retardation. Regardless of this Court's view of a bright-line cutoff, Turner's execution will not be prohibited by the Eighth Amendment. Turner is not injured by Florida's current definition of mental retardation. Turner has no personal stake in the outcome of the controversy. *Summers v. Earth Island Institute*, - U.S. -, 129 S.Ct. 1142 (2009) (holding environmental organizations did not have standing because the regulations did not affect the organizations and noting "the requirement of injury in fact is a hard floor of Article III jurisdiction."); *Burch v. Louisiana*, 441 U.S. 130, 132, n.4 (1979) (holding that one of the defendants who was convicted by a unanimous six-person jury lacked standing to raise a non-unanimous challenge to his conviction). Only a

defendant with a low IQ such that he could conceivably fall into the category of being mentally retarded depending on how the category is defined can possible have standing to raise the issue of bright-line cutoffs.

Turner is actually seeking an advisory opinion from this Court regarding a matter that will have no actual effect in his case. Any opinion from this Court regarding the proper definition of mental retardation would be advisory as to a defendant with a normal IQ such as Turner. This Court does not issue advisory opinions. *Clinton v. Jones*, 520 U.S. 681, 700, n.33 (1997)(observing that this Court "early and wisely determined that it would not give advisory opinions . . ."); *Coleman v. Thompson*, 501 U.S. 722, 730 (1991) (explaining that when this Court reviews a state court decision, it is reviewing the judgment and if the resolution of a federal question cannot affect the judgment, there is nothing for the Court to do.); *Herb v. Pitcairn*, 324 U.S. 117, 126 (1945)(observing that "if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion."). Turner's petition for writ of certiorari presents an abstract legal issue that has no relevance to his particular case.

Conflict among the courts

Furthermore, the actual issue is splitless. There is no conflict between the Florida Supreme

Court's decision rejecting Turner's claim of mental retardation because both of his IQ scores "fell within the average intelligence range" and any other state court of last resort or federal court of appeals decision. *See* Sup. Ct. R. 10(b). Turner asserts there is "considerable controversy" among the courts regarding the propriety of using bright-line cutoffs in determination of mental retardation for purposes of *Atkins* but there is no controversy regarding the issue of whether a capital defendant with an IQ of 108 is mentally retarded. There is no controversy whatsoever regarding that matter. Turner does not cite a single case where the defendant's IQ was in the normal range yet a court held that *Atkins* applied to that defendant. The actual issue in this case is splitless.

Moreover, simple variations in the states' definition of mental retardation are not enough to establish conflict in this area. Recognizing a difference of opinion among various sources as to who should be classified as mentally retarded, this Court in *Atkins* left to the various states the task of defining mental retardation. *Atkins*, 536 U.S. at 317 (leaving to the states "the task of developing appropriate ways to enforce the constitutional restriction upon their execution of sentences."). This Court in *Atkins* reviewed the various state legislatures that had enacted statutes prohibiting the execution of the mentally retarded starting with Georgia in 1986 and including other states in the subsequent years. As part of that discussion, this Court observed that in

2000 and 2001, six more states, including Florida, had joined suit. *Atkins*, 536 U.S. at 313-315. This Court also noted that while the state's statutory definitions of mental retardation were "not identical," they generally conformed to the clinical definitions of mental retardation. *Atkins*, 536 U.S. at 317 n.22. As explained above, Florida was one of those states that already had a statute prohibiting the execution of mentally retarded capital defendants and a statutory definition of mental retardation at the time of this Court's decision in *Atkins*. Obviously, this Court realized when it left the definition to the states that there would be some differences between the various states' definitions. Basically, Turner is asking this Court to constitutionalize a particular definition of mental retardation which is exactly what this Court declined to do in *Atkins*. *See also Bobby v. Bies*, - U.S. -, 129 S.Ct. 2145, 2150 (2009)(noting, that the *Atkins* Court "did not provide definitive procedural or substantive guides for determining when a person who claims mental retardation will be so impaired as to fall within *Atkins'* compass;" rather, that task was left to the States, in an Ohio case, which has a rebuttable presumption that a defendant is not mentally retarded if his or her IQ is above 70). There is no conflict with this Court's decision in *Atkins*.

The Florida Supreme Court observed that many other states also have similar cutoffs. *Cherry v. State*, 959 So.2d 702, 713 n.8 (Fla. 2007)(observing that "fourteen of the twenty-six jurisdictions with mental retardation statutes have a cutoff of seventy or two

standard deviations below the mean" citing *Bowling v. Commonwealth*, 163 S.W.3d 361, 373-74 (Ky. 2005)). Other state supreme courts have also affirmed their state's respective definitions of mental retardation that require IQ scores below a bright-line cutoff. *Miller v. State*, - S.W.3d -, 2010 WL 129708 (Ark. January 7, 2010)(rejecting a constitutional attack on Arkansas's definition of mental retardation, which requires an IQ score of 65 or below, and rejecting a contention that *Atkins* requires courts to recognize IQ scores up to 75 as qualifying as "entirely without merit."); *Howell v. State*, 151 S.W.3d 450, 458 (Tenn. 2004)(concluding that to be considered mentally retarded, a defendant must have an I.Q. of seventy or below because the statute makes no reference to a standard error of measurement). A federal district court recently, in a federal Death Penalty Act prosecution, also employed a bright-line cutoff and required a showing of 75 or less for *Atkins* to apply. *United States v. Hardy*, 2010 WL 4909550, 5 (E.D.La. November 24, 2010)(finding as a factual matter, in a federal Death Penalty Act case, "that a diagnosis of mental retardation requires an IQ score of 75 or less on one of the standard IQ tests."). While other state supreme courts have rejected bright-line cutoff scores, those courts have not held that the Eighth Amendment requires a particular definition. Rather, those supreme courts have determined the test for mental retardation as a matter of state law as they are entitled to do under *Atkins*.

Turner's reliance on the district court's decision

in *Thomas v. Allen*, 614 F.Supp.2d 1257 (N.D.Ala. 2009), is misplaced. The district court in *Thomas* observed, in a couple of footnotes, that the Alabama Supreme Court's cutoff requiring an IQ score of below 71 was not found in the statute or the diagnostic criteria of either the AAMR or the APA. *Thomas*, 614 F.Supp.2d 1257 at n.13 & n.44. This is not a holding that employing a bright-line cutoff is unconstitutional. The district court also concluded that a court "must also consider the Flynn effect and the standard error of measurement in determining whether a petitioner's IQ score falls within a range containing scores that are less than 70." *Thomas*, 614 F.Supp.2d 1281. On appeal of that decision, however, the Eleventh Circuit, did not repeat this conclusion. *Thomas v. Allen*, 607 F.3d 749, 752 (11th Cir. 2010). Rather, the Eleventh Circuit stated that courts may consider the standard error of measurement and the Flynn Effect. *Thomas*, 607 F.3d at 753 (noting that the parties stipulated to a SEM of five points).[2] The Eleventh Circuit also

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[2] Here, two different experts performed two different types of IQ tests. The expert recommended by the State, administered the Wechsler Adult Intelligence Scales ("WAIS III"), and determined Turner's full scale I.Q. is 98. (PC Vol. II 202, 206-207). The expert recommended by the defense, administered the Stanford Binet Intelligence Scale - 5th ed. and determined Turner's full scale I.Q. is 108. (PC Vol. V 876, 877). The standard error of measurement (SEM) is employed more when dealing with a single IQ score generated by a single IQ test. The different, multiple IQ tests given by the experts in this case produce a range of 98 to 108. Additionally, the Flynn Effect is used to adjust IQ scores that are decades old. The two IQ tests given to Turner in this case were administered in 2008.

noted that "[a]lthough the *Atkins* Court alluded to clinical definitions propounded by the American Association on Mental Retardation ("AAMR") and the American Psychiatric Association ("APA"), it left to the states the development of standards for courts to employ in making a determination of whether an offender is mentally retarded" and looked to Alabama caselaw for the definition of mental retardation. *Thomas*, 607 F.3d at 752. Furthermore, the Eleventh Circuit endorsed Alabama's requirement that the capital defendant must establish that he was mentally retarded during three periods of his life: before the age of eighteen, on the date of the capital offense, and currently. *Thomas*, 607 F.3d at 753. Moreover, a federal district court is not a state court of last resort or a federal court of appeals. *See* Sup. Ct. R. 10(b).

Turner points to a single dissent to establish that the Eighth Amendment requires the rejection of any bright-line cutoffs. *In re Bowling*, 422 F.3d 434, 440-444 (6th Cir. 2005)(Moore, J., dissenting). However, Judge Moore's dissent did not conclude that Kentucky's bright-line rule was unconstitutional. Rather, the dissent felt the defendant had presented a viable claim of mental retardation because he may have scored 74 on one IQ test taken when he was a teenager and should be permitted to file a second or successive habeas petition to explore the issue further. The dissent is inapposite both factually and legally to

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These IQ scores are not decades old. Neither the SEM nor the Flynn Effect are significant in this case.

this case. And, obviously, dissents are not a proper basis to establish conflict under rule 10(b). *See* Sup. Ct. R. 10(b).

There is no conflict between the Florida Supreme Court's decision and any decision of this Court or any decision of any state court of last resort or federal court of appeals. There is no basis for granting certiorari review of this case. The petition should be denied.

CONCLUSION

For these reasons, Respondent respectfully asks this Court to deny the petition for writ of certiorari.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

CAROLYN M. SNURKOWSKI*
ASSOCIATE DEPUTY ATTORNEY GENERAL
FLORIDA BAR NO. 158541
*Counsel of Record

CHARMAINE M. MILLSAPS
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0989134
PL-01, THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300 /// FAX (850) 487-0997
charmaine.millsaps@myfloridalegal.com

COUNSEL FOR RESPONDENT